

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CARL W. CUNNINGHAM,

Petitioner,

v.

RON VAN BOENING,

Respondent.

Case No. C10-5066RJB

ORDER GRANTING
REQUEST FOR AN
EXTENSION OF TIME

The underlying Petition for a Writ of Habeas Corpus has been referred to United States Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1)(A) and 636 (b)(1)(B), and Local Magistrate Judge's Rule MJR3 and MJR4. Petitioner is seeking federal habeas relief, pursuant to 28 U.S.C. § 2254.

Before the court is Respondent's motion for an extension to file the answer (Doc. 11). The motion was filed on April 7, 2010, and noted for April 19, 2010. Petitioner has not filed any opposition.

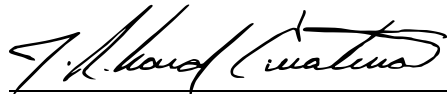
Even if petitioner opposed the motion, the Ninth Circuit has expressly declared that a habeas corpus petitioner is not entitled to default judgment. Gordan v. Duran, 895 F.2d 610 (9th

1 Cir. 1990). The habeas petitioner still bears the burden of showing that he or she is in custody in
2 violation of the constitution. Absent such a showing, the petitioner is not entitled to relief. Id.
3 See also, Bermudez v. Reid, 733 F.2d 18, 21 (2nd Cir.), cert. denied, 469 U.S. 874 (1984);
4 Broussard v. Lippman, 643 F.2d 1131 (5th Cir.), cert. denied, 452 U.S. 920 (1981); Goodman v.
5 Keohane, 663 F.2d 1033, 1047 n. 4 (11th Cir. 1981); Allen v. Perini, 424 F.2d 134, 138 (6th
6 Cir.), cert. denied, 400 U.S. 906 (1970); Ruiz v. Cady, 660 F.2d 337, 341 (7th Cir. 1981). It is in
7 the interest of justice to provide reasonable time to obtain an Answer, including the state court
8 records, before reviewing the petition for writ of habeas corpus.

10 Respondent has shown good cause for an extension of time. Accordingly, the motion for
11 an extension of time is GRANTED. **Respondent's Answer to the petition shall be filed on or**
12 **before May 28, 2010.**

13 The Clerk is directed to mail a copy of this Order to petitioner.

14 Dated this 21st day of April, 2010.

16 

17 J. Richard Creatura
18 United States Magistrate Judge